

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

MT. VERNON FIRE INSUR. CO. )  
Plaintiff ) No. 3:16-0689  
vs. ) JUDGE CRENSHAW  
LIEM CONSTRUCTION, INC., et al ) MAGISTRATE KNOWLES  
Defendant )  
 )  
 )

**DEFENDANT ASHLER OAKS' MOTION TO STAY PROCEEDINGS**

Defendant Ashler Oaks, LLC d/b/a Roundtree Apartments (“Ashler Oaks”) moves this Court for an Order staying all proceedings in this cause, pending the trial of the underlying state lawsuit in Davidson County Chancery Court styled: Ashler Oaks et al v. R.F. Jones et al, Davidson County Chancery Court, Case No. 15-215-II, (the “Underlying Lawsuit”)(attached to Plaintiff’s Complaint as Exhibit E)[Dkt. No. 1-5].

Pursuant to the Sixth Circuit decision in Grand Trunk W.R. Co. v. Consol. Rail Corp., 746 F.2d 323, 326 (6<sup>th</sup> Cir. 1984), this Court’s exercise of its declaratory authority will not settle the controversy between all parties, will not serve a useful purpose in clarifying the legal relations at issue, is being used by Plaintiff for the purpose of procedural fencing, and has increased friction between state and federal courts. *See Id.* at 326.

Under circumstances analogous to the case at bar, this Court has held that a stay of the federal proceedings pending resolution of the Underlying Lawsuit is proper.

No demand for payment has been upon the Plaintiff in the Underlying Lawsuit. No finding of liability has been entered, and there is no way to determine if any demand will ever be made upon Plaintiff at this time. Accordingly, Plaintiff's claim that it has no duty to defend and indemnify Liem Construction, Inc. is premature.

The record is still being developed in the Underlying Lawsuit, which was filed prior to this action. There remains unresolved issues of fact and Tennessee law. The Underlying Lawsuit's factual issues are critical to an informed resolution of the case, and the state court is in a better position to evaluate those factual issues.

At the direction of Plaintiff, the Defendant Liem Construction, Inc. has filed a motion to stay discovery in the Underlying Lawsuit, pending resolution of Plaintiff's motion for summary judgment. [Dkt. No. 36]. The Plaintiff has attempted to stop development of the record and disposition of the Underlying Lawsuit. If granted, the progression of the Underlying Lawsuit would come to a halt, which is contrary to the law of the Sixth Circuit.

For the foregoing reasons, as started in more detail in the Memorandum of Law filed contemporaneously herewith, Defendant Ashler Oaks moves this Court for an Order staying this proceeding pending the trial of the Underlying Litigation.

Respectfully Submitted,

/s/ Bryant Kroll  
W. Gary Blackburn #3484  
Bryant Kroll #33394  
THE BLACKBURN FIRM, PLLC  
213 Fifth Avenue North, Suite 300  
Nashville, TN 37219  
Telephone: (615) 254-7770  
Facsimile: (866) 895-7272  
[gblackburn@wgaryblackburn.com](mailto:gblackburn@wgaryblackburn.com)  
[bkroll@wgaryblackburn.com](mailto:bkroll@wgaryblackburn.com)

**Certificate of Service**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served upon the following via the Court's CM/ECF system:

Michael G. Derrick #14820  
Christopher Crain #19900  
SHUTTLEWORTH WILLIAMS, PLLC  
22 North Front Street, Suite 850  
Memphis, Tennessee 38103  
Phone: (901) 526-7399  
[mderrick@shuttleworthwilliams.com](mailto:mderrick@shuttleworthwilliams.com)  
[craint@shuttleworthwilliams.com](mailto:craint@shuttleworthwilliams.com)

/s/ Bryant Kroll